

consumer credit, aviation, telecommunications, power generation, environment, roads and tunnels, industrial manufacturing, and real property. In various circulars issued to shareholders, applicant has stated that it expects growth in earnings from its operating businesses.

10. Applicant's principal officers and directors are actively engaged in the management and development of applicant's businesses. In many of these companies, applicant's officers play a leading role in management's strategic decision making or in other essential operational functions, such as identifying expansion opportunities or leading financing efforts. Applicant's top officers have extensive backgrounds in banking, shipping, heavy industry, power generation, property development, law, government, accounting, and finance. None of applicant's principal officers has experience as an investment manager or adviser, and none of them holds himself out as an expert in these areas. No principal officer of applicant devotes any of his time to investment management, apart from cash management. Applicant estimates that approximately 80% of management's time is devoted to considering issues related to operating its various businesses, and the remainder of management's time is devoted to the pursuit of new business opportunities, maintaining relations with joint venture and consortium partners, obtaining financing, and administrative matters.

11. As of December 31, 1994, applicant's majority-owned subsidiaries³ accounted for 44.46% of applicant's assets for the prior 12 months. As of December 31, 1994, Dragonair, a company controlled by applicant,⁴ accounted for 6.91% of applicant's assets.

12. Applicant also presumptively controls companies other than Dragonair that are involved in the development of core infrastructure. Applicant asserts that it need not establish that such companies and Dragonair conduct "similar types of

business" within the meaning of section 3(b)(2) in order to obtain exemptive relief, however. Section 3(b)(2) requires similarity of businesses only among those controlled companies which must be added to arrive at a determination of the primary business engagement of the controlling company.⁵ In applicant's case, only Dragonair need be added to applicant's majority-owned subsidiaries to demonstrate that applicant is primarily engaged in trade and infrastructure (aviation) businesses through majority-owned subsidiaries and controlled companies.

13. Accordingly, 51.37% of applicant's assets as of December 31, 1994, valued in accordance with section 2(a)(41) of the Act, were comprised of its majority-owned subsidiaries and Dragonair.

14. Applicant's income derives from dividends paid out of operating returns from the companies through which it does business. As of December 31, 1994, 67.80% of applicant's income for the prior twelve months was produced by its majority-owned subsidiaries and Dragonair.

15. Applicant asserts that its historical development, its public representations of policy, the activities of its officers and directors, the nature of its assets, and the nature of its income demonstrates that applicant is not engaged primarily in the business of investing in securities. Applicant submits that it is primarily engaged, through controlled companies and majority-owned subsidiaries, in trade, distribution, transportation, power, and other infrastructure industries in the China region.

For the SEC, by the Division of Investment management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010-01-M

[Rel. No. IC-21283; No. 812-9376]

First Variable Life Insurance Company, et al.

August 15, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: First Variable Life Insurance Company ("First Variable"), First Variable Annuity Fund E

("Separate Account"), and First Variable Capital Services, Inc. ("Capital Services").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account or any other separate account ("Other Accounts") established by First Variable to support certain variable annuity contracts ("Contracts") as well as other variable annuity contracts that are substantially similar in all material respects to the Contracts ("Future Contracts"). This order will supersede prior orders issued by the Commission permitting Applicants to issue variable annuity contracts that provide for the deduction of mortality and expense risk charges from the Separate Account.

FILING DATE: Applicants filed their application on December 19, 1994, and filed amended applications on May 22, 1995, July 21, 1995, and August 15, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 11, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Applicants, Arnold Bergman, First Variable Life Insurance Company, 600 Atlantic Avenue, 28th Floor, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT: Pamela K. Ellis, Senior Counsel, or Wendy Finck Friedlander, Deputy Chief at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

³ Section 2(a)(24) of the Act defines a "majority-owned subsidiary" of a person as 11a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which * * * is a majority-owned subsidiary of such person."

⁴ "Control" is defined in section 2(a)(9) of the Act to mean "the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position within such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company."

⁵ *In the Matter of American Manufacturing Company, Inc.*, 41 S.E.C. 415, 419 (Mar. 11, 1963).

Applicants' Representations

1. First Variable, a stock life insurance company, is organized in Arkansas, and licensed to do business in the District of Columbia, the United States Virgin Islands, and all states except New York.

2. The Separate Account is a separate account established by First Variable to fund the Contracts. The Separate Account is registered with the Commission as a unit investment trust under the 1940 Act, and interests in the Contracts are registered as securities under the Securities Act of 1933.

3. Capital Services will serve as the distributor and the principal underwriter for the Contracts. Capital Services, a wholly owned subsidiary of First Variable, is registered under the Securities Exchange Act of 1934 as a broker-dealer, and is a member of the National Association of Securities Dealers, Inc.

4. First Variable Advisory Services Corp., a wholly owned subsidiary of First Variable, is the investment advisor for the Trust.

5. By orders of the Commission,¹ Applicants were granted exemptions under Section 6(c) of the 1940 Act from the provisions of Section 26(a)(2) and 27(c)(2) to the extent necessary to permit the deduction of mortality and expense risk charges from the assets of the Separate Account in connection with the issuance of certain variable annuity contracts. Applicants now request that such orders be superseded by the order requested in this application.

6. The Contracts are three variable annuity contracts: VISTA Contracts, Direct Annuity Contracts, and Direct Annuity Plus Contracts. First Variable will make the Contracts available for use by individuals in retirement plans which may or may not qualify for federal tax advantages under the Internal Revenue Code. Each of the Contracts requires certain minimum initial purchase payments. Subsequent purchase payments will be at least \$100 for the VISTA Contracts and the Direct Annuity Contracts. For the Direct Annuity Plus Contracts, the minimum subsequent purchase payments will be \$500 for non-qualified Contracts and \$100 for qualified Contracts.

7. The purchase payments under the Contracts will be allocated to the Separate Account and/or to the general account. The Separate Account is

divided into subaccounts ("Subaccounts"), which will invest in the shares of one of the portfolios of Variable Investors Series Trust ("Trust"). The Trust is an open-end, management investment company and currently has seven portfolios. First Variable may establish additional Subaccounts and may substitute or add additional portfolios of the Trust or, where appropriate, of other registered, open-end investment companies.

8. The Contracts provide for a death benefit if the annuitant dies during the accumulation period. For the VISTA Contracts, the death benefit is the greater of: (1) The aggregate value; or (2) the sum of purchase payments less any withdrawals; or (3) the aggregate value as of the first day of the current five year Contract period² plus any purchase payments made since that day and less any amounts withdrawn since that day. Where permitted by state law, First Variable will provide a death benefit for its Direct Annuity Contracts that will be the greater of: (1) The purchase payments, less any withdrawals including any applicable Withdrawal Charge, as defined below;³ (2) the Contract value; or (3) the Contract value as of the first day of the current five year Contract period plus any purchase payments made since that day and less any amounts withdrawn since that day. Otherwise, the death benefit will be the greater of: (1) The purchase payments, less any withdrawals including any applicable Withdrawal Charges; or (2) the Contract value. The death benefit for the Direct Annuity Plus Contracts will be the greater of the purchase payments, less any withdrawals, or the Contract value.

9. Certain charges and fees are assessed under the Contracts. In the case of the VISTA and Direct Annuity Contracts, prior to the annuity date, amounts allocated to the Separate Account may be transferred among Subaccounts without the imposition of any fee or charge if there have been no more than 12 transfers for the VISTA Contracts, or more than six transfers for the Direct Annuity Contracts, made in the Contract year. Subsequent transfers within a Contract year, however, will be assessed a \$25 per transfer, or, if less, 2% of the amount transferred. First Variable will not impose a transfer fee on any transfers made by the owners of the Direct Annuity Plus Contracts. Applicants represent that the transfer

fee is at cost with no anticipation of profit.

10. A withdrawal charge ("Withdrawal Charge") may be imposed on certain withdrawals. The owner may withdraw the owner's interest in a Contract in whole or in part prior to the date annuity payments commence.⁴ For the VISTA Contracts, an owner may make such withdrawals without charge in an amount not to exceed the withdrawal privilege amount ("Privilege Amount"). The Privilege Amount is equal to the sum of 10% of the new purchase payments not previously withdrawn, plus 100% of the excess of the value of a Contract over new purchase payments not previously withdrawn. New purchase payments are purchase payments made in the current and four previous Contract years. It is assumed that purchase payments are withdrawn in the order in which they were made. In the event that a withdrawal exceeds the Privilege Amount for the VISTA Contracts, the Withdrawal Charge is determined by multiplying the excess of the amount withdrawn over the Privilege Amount by a percentage that decreases annually from 5% to 0% over six Contract years.

No Withdrawal Charge will be assessed on withdrawals from the Direct Annuity Contracts unless the withdrawals exceed the free withdrawal amount ("Free Amount"). The Free Amount is determined as the sum of 10% of premiums that remain subject to the Withdrawal Charge, plus the excess of the Contract value over purchase payments not previously withdrawn, plus any purchase payments no longer subject to the Withdrawal Charge. Should the withdrawal exceed the Free Amount, the Withdrawal Charge for the Direct Annuity Contracts will be determined by multiplying the excess of the amount over the Free Amount by a percentage that decreases annually from 7% to 0% over six years from the Contract anniversary since the purchase payment. Purchase payments are deemed to be withdrawn in the order in which they are made. An owner may make a withdrawal each Contract year of the Free Amount provided that the minimum partial withdrawal amount is \$1,000 or the owner's entire interest in the Subaccount, if less.

There will be no Withdrawal Charge imposed on withdrawals made under the Direct Annuity Plus Contracts.

11. First Variable deducts on each valuation date an administration charge.

¹ *First Variable Life Ins. Co.*, Inv. Co. Act Rel. Nos. 18741 (Jun. 1, 1992) (Order), and 18695 (May 6, 1992) (Notice); *Monarch Life Ins. Co.*, Act Rel. Nos. 18165 (May 23, 1991) (Order), and 18117 (Apr. 26, 1991) (Notice); and *First Variable Life Ins. Co.*, Inv. Co. Act Rel. Nos. 15701 (Apr. 24, 1987) and 15644 (Mar. 26, 1987) (collectively, "Existing Orders").

² The first five year Contract period begins on the issue date, the second five year Contract period begins on the fifth Contract anniversary, and so forth.

³ See *infra* at Paragraph 9.

⁴ Although the VISTA Contracts provide that an owner may not make more than four partial withdrawals in any Contract year, First Variable does not and will not enforce this limitation.

For the VISTA and Direct Annuity Contracts, the administrative charge is equal, on an annual basis, to .15% of the net asset value of the Separate Account. For the Direct Annuity Plus Contracts, the administrative charge is equal, on an annual basis, to .25% of the average daily net asset value of the Separate Account. First Variable submits that it incurs additional administrative expenses for the Direct Annuity Plus Contracts because it permits an owner to make unlimited transfers without the imposition of any fee or charge.

12. An annual contract maintenance charge of \$30 will be charged against each Contract (for the VISTA Contracts, it is only deducted during the accumulation period). For the VISTA Contracts, in the case of a total withdrawal occurring 31 or more days after the beginning of the Contract year, the full charge of \$30 will be deducted. For the Direct Annuity Contracts, if the annuity date is not the Contract anniversary, a pro rata portion of the annual contract maintenance charge will be deducted on the annuity date. For the Direct Annuity Plus Contracts, if the Contract value on a Contract anniversary is at least \$50,000, then no annual contract maintenance charge will be deducted (if a total withdrawal is made on other than a Contract anniversary and the Contract value for the valuation period during which the total withdrawal is made is less than \$50,000, the full annual contract maintenance charge will be assessed at the time of the withdrawal).

13. The administration charge and the annual contract maintenance charge are designed to compensate First Variable for assuming administrative expenses related to the Separate Account and the issuance and maintenance of the Contracts. These charges will not be increased by First Variable. First Variable represents that it does not intend to profit from the administration charge and the annual contract maintenance charge.

14. First Variable deducts a mortality and expense risk charge from each Separate Account. First Variable represents that the aggregate mortality and expenses risk charge is equal, on an annual basis, to 1.25% of the net asset value of each Subaccount of the Separate Account. Of this amount, approximately .80% is for mortality risks and .45% is for expense risks.⁵

15. First Variable assumes the mortality risk that the life expectancy of

the annuitant will be greater than that assumed in the guaranteed annuity purchase rates, thus requiring First Variable to pay out more in annuity income than it had planned.

Furthermore, First Variable assumes the mortality risk that it will waive the Withdrawal Charge in the event of the death of the owner under certain Contracts. Thus, First Variable assumes the risk that it may not be able to cover its distribution expenses and that the owner may die at a time when the amount of the death benefit payable exceeds the then net surrender value of the Contracts. The expense risk assumed by First Variable is that the Contract administration charge and the annual contract maintenance charge will be insufficient to cover the cost of administering the Contracts.

16. In the event the mortality and expense risk charges are more than sufficient to cover First Variable's costs and expenses, any excess will be a profit to First Variable. Any profit realized by these charges may be used by First Variable to, among other things, offset losses experienced when the Withdrawal Charges are insufficient. The mortality and expense risk charges may not be increased under the Contracts.

17. Various jurisdictions levy premium taxes on annuity premiums received by life insurance companies. First Variable may charge Contracts the amount of any tax levied as a result of the issuance, maintenance, surrender, or annuitization of a Contract at the time the purchase payment is received, or, if not previously deducted, such tax may be deducted: (1) At the annuity commencement date; (2) in the event of the annuitant's or owner's death prior to the annuity commencement date; (3) in the event of partial or total withdrawal; and (4) when payable by First Variable. For the Direct Annuity Contracts, First Variable intends to advance any premium taxes when due at the time purchase payments are made and then deduct premium taxes from an owner's Contract value at the time annuity payments begin or upon surrender if First Variable is unable to obtain a refund. For the Direct Annuity Plus Contracts, First Variable intends to deduct premium taxes when incurred. First Variable represents that state premium taxes may range up to 4% of purchase payments.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule, or regulation

of the 1940 to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940, in relevant part, prohibit a registered unit investment trust, its depositor, or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

3. Applicants request exemptions from Sections 26(a)(2) and 27(c)(2) of the 1940 Act to the extent necessary to permit the deduction from the assets of the Separate Account and the Other Accounts in connection with the Contracts and Future Contracts of the 1.25% charge for the assumption of mortality and expense risks. Applicants believe that the terms of the relief requested with respect to any Future Contracts funded by Other Accounts are consistent with the standards enumerated in Section 6(c) of the 1940 Act. Without the requested relief, Applicants would have to request and obtain exemptive relief for each new Other Account it establishes to fund any Future Contract. Applicants submit that any such additional request for exemption would present no issues under the 1940 Act that have not already been addressed in this application.

Applicants submit that the requested relief is appropriate in the public interest, because it would promote competitiveness in the variable annuity contract market by eliminating the need for Applicants to file redundant exemptive applications, thereby reducing their administrative expenses and maximizing the efficient use of their resources. The delay and expense involved in having repeatedly to seek exemptive relief would reduce Applicants' ability effectively to take advantage of business opportunities as they arise.

Applicants further submit that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. If Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional

⁵ Under the Existing Orders, First Variable deducts on each valuation date a mortality and expense risk charge which is equal, on an annual basis, to 1.25% (consisting of approximately .75% for mortality risks and .50% for expense risks).

protection thereby. Investors might be disadvantaged as a result of Applicants' increased overhead expenses.

Applicants thus believe that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

4. Applicants represent that the 1.25% per annum mortality and expense risk charge is within the range of industry practice for comparable annuity contracts. This representation is based upon an analysis of publicly available information about similar industry products, taking into consideration such factors as, among others, the current charge levels, guaranteed annuity rates, and other contact charges and options. First Variable will maintain at its principal offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, Applicants' comparative review.

5. First Variable has conducted that there is a reasonable likelihood that the Separate Account's and Other Accounts' proposed distribution financing arrangements will benefit the Separate Account and the Other Accounts and their investors. First Variable represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion.

6. The Separate Account and Other Accounts will be invested only in management investment companies that undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b-1 under the 1940 Act, to have such plan formulated and approved by their board members, the majority of whom are not "interested persons" of the management investment company within the meaning of Section 2(a)(19) of the 1940 Act.

Conclusion

For the reasons set forth above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 95-20772 Filed 8-21-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21310; 812-9620]

Springtree Properties Limited Partnership, et al.; Notice of Application

August 16, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Springtree Properties Limited Partnership (the "Partnership"), and John J. Hansman ("Hansman") and Summit Investment Services, Inc. ("Summit") (collectively, the "General Partners").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for an exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit the Partnership to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATE: The application was filed on June 2, 1995 and will be amended during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 11, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street N.W., Washington, D.C. 20549. Applicants, 600 Stewart Street, Suite 1704, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Staff Attorney, at (202) 942-0654, or Robert A. Robertson, Branch Chief, at (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was formed as a Washington limited partnership on December 15, 1994. The Partnership will operate as a "two-tier" partnership, i.e., the Partnership, as a limited partner, will invest in other limited partnerships (the "Property Partnerships"). The Property Partnerships will be managed by general partners (the "Developer General Partners") that are not affiliated with the Partnership or the General Partners. The Property Partnerships, in turn, will engage in the ownership and operation of apartment complexes ("Properties") expected to qualify for low income housing tax credits ("Credits") under the Internal Revenue Code of 1986 (the "Code").

2. The objectives of the Partnership are to: (a) Provide tax benefits, including Credits and passive activity losses, which investors may use to offset their Federal income tax liabilities; (b) distribute proceeds from liquidation, sale, or refinancing transactions; and (c) to the extent permitted by the terms of applicable local, state, and/or federal government assistance, distribute cash from operating the Properties.

3. Units of limited partnership interest in the Partnership (the "Units") will be offered and sold without registration under the Securities Act of 1933 (the "Securities Act") in reliance on section 4(2) of the Securities Act and Regulation D thereunder. No Units will be sold unless subscriptions to purchase at least five Units (the "Minimum Offering") are received and accepted by the General Partners prior to March 31, 1996. If the Minimum Offering has not been sold by such date, no Units will be sold and all funds received from subscribers will be refunded with interest.

4. Until the Minimum Offering has been sold, offering proceeds will be deposited and held in trust for the benefit of purchasers in an escrow account with Seattle-First National Bank in Seattle, Washington, to be used only for the specific purposes set forth in the Confidential Private Placement Memorandum dated May 16, 1995 (the "Memorandum"). The Partnership intends to apply offering proceeds to the acquisition of limited partnership interests in the Property Partnerships as promptly as possible (although such proceeds may be invested temporarily in bank time deposits, certificates of deposit, money market accounts, and government certificates). The Partnership will not trade or speculate in temporary investments.